Supreme Court, U.S.
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No. 94-482

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

ENTERPRISE CONSOLIDATED SCHOOL DISTRICT
by and through Its Board of Trustees,
Petitioner,

v.

THE LAUDERDALE COUNTY, MISSISSIPPI SCHOOL DISTRICT,
by and through Its Board of Trustees, *et al.*,
and the
QUITMAN, MISSISSIPPI SCHOOL DISTRICT,
by and through Its Board of Trustees, *et al.*,
Respondent.

Consolidated With
ENTERPRISE CONSOLIDATED SCHOOL DISTRICT,
Petitioner,

v.

QUITMAN CONSOLIDATED SCHOOL DISTRICT,
Respondent.

On Petition For A Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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October 13, 1994

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QUESTIONS PRESENTED

Whether the Court of Appeals properly applied Milliken vs. Bradley, 418 U.S. 717 (1974), in reversing the District Court's decision to order interdistrict relief in the absence of a finding by the District Court of an interdistrict constitutional violation?

Whether the Court of Appeals erred in upholding under the clearly erroneous standard the District Court's factual finding that equitable estoppel barred a party from asserting a position inconsisent with that party's conduct and representations over a 26-year period?

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ENTERPRISE CONSOLIDATED SCHOOL DISTRICT,
Petitioner,

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QUITMAN CONSOLIDATED SCHOOL DISTRICT,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

Respondent Quitman School District respectfully requests that this Court deny the petition for writ of certiorari, which seeks review of the Fifth Circuit's opinion reported at 24 F.3d 671.

STATEMENT OF FACTS

Enterprise mischaracterizes the Fifth Circuit's holding and misstates the record in several instances.

1. Enterprise states that "in 1962, Enterprise and Quitman entered into a twenty-five (25) year contract ceding [the Stonewall area] from Enterprise to Quitman in return for Enterprise's agreeing to educate all black school age children continuing to reside in Stonewall." Pet. at 3. Throughout this litigation, Enterprise has attempted to link the validity of the annexation to the student-transfer contract, which all agree is unconstitutional. Both the District Court and the Court of Appeals rejected Enterprise's position. As the District Court found, the annexation, which was not limited in duration, and the 25-year student-transfer contract were separate parts of a larger compromise that settled the dispute over ownership of Stonewall. App. 6-7, 55. The Fifth Circuit affirmed this factual finding under the clearly erroneous standard of Fed. R. Civ. P. 52(a). "The annexation should be viewed separately from the rest of the agreement. By itself, the annexation is constitutional." App. 50. The Fifth Circuit also held that "even assuming that the Stonewall annexation and [the 1962] transfer agreement are linked, the annexation is not void." App. 55. The annexation, which was accomplished by a statutory procedure separate and distinct from the 25-year student-transfer contract, did not promote segregation. App. 55-57.

2. Enterprise states that it was estopped from "raising the constitutionality of the contract" and that the Fifth Circuit "affirmed the District Court by upholding the contract between Enterprise and [Quitman]." Pet. at 6; see also id. at 10. The Fifth Circuit upheld the validity of the annexation and affirmed the District Court's holding that equitable estoppel prevented Enterprise from challenging the annexation. The validity of the student-transfer contract was not in issue. All parties, including Enterprise, acknowledged the unconstitutionality of that contract. App. 62. In fact, Quitman stopped performing under the student-transfer contract in 1969, and repudiated it in 1977 because it discriminated against blacks. App. 12. Enterprise's suggestion that the District Court or Fifth Circuit upheld the student-transfer contract is simply wrong.

3. Enterprise's reference to "[t]he insulation of the town of Stonewall in its whiteness" suggests that Quitman's annexation was racially motivated. Pet. at 11. The impetus for the annexation, however, was not race but Enterprise's decision to close the Stonewall High School. Parents of the high school students actually initiated the process resulting in the annexation. App. 42-43. Moreover, the territory annexed was clearly defined, and not a "white only" area. Prior to 1962, the area annexed was the "Stonewall Attendance Area" of the Enterprise district and, before then, had comprised the boundaries of a separate school district. Neither the District Court nor the Court of Appeals held that a racial animus motivated the annexation. App. 57.

REASONS WHY THE PETITION SHOULD BE DENIED

A. The Fifth Circuit's decision regarding estoppel is fact-sensitive and creates no conflict with the decisions of this Court or any court of appeals. In addition, the Fifth Circuit relied on an alternative holding to support its decision.

1. The Fifth Circuit's holding that Quitman validly annexed the Stonewall area is based on alternative holdings. The Court of Appeals held that equitable estoppel precluded Enterprise from challenging the annexation and that Quitman's ownership and control over Stonewall is consistent with the final order in the desegregation litigation. App. 41-42, 50. The basis for each holding is briefly reviewed.

During the desegregation litigation in the 1960s, Enterprise admitted in its pleadings, testimony and exhibits that the Stonewall area was a part of Quitman. App. 50-51. After entry of the final desegregation order in 1969, Enterprise continued to recognize that Stonewall had been lawfully annexed by Quitman. "For over twenty-six years, from June 1962 until June 17, 1988, when suit was filed, Enterprise did nothing to indicate that the Stonewall area had not lawfully been annexed to Quitman." App. 51 As a result, "Quitman was unaware that Enterprise would suddenly challenge the annexation after decades of acquiescence." App. 51-52.

The Fifth Circuit affirmed the District Court's factual finding that Quitman relied to its detriment on Enterprise's representations. App. 50. The evidence before the District Court showed that "Quitman planned, budgeted, forecasted, funded, hired teachers and staff members, paid taxes, and maintained school property since [the 1962 annexation] under

the assumption that the Stonewall territory was properly annexed." App. 53. Based on this evidence, the District Court found that equitable estoppel applied. App. 50. Consistent with Fed. R. Civ. P. 52(a), the Fifth Circuit upheld the finding. See Anderson vs. City of Bessemer City, 470 U.S. 564, 573-76 (1985).

Enterprise's Petition is simply an effort to have this Court review the same record in the hope that a different outcome might be reached. Therefore, this issue does not merit review by this Court. See Goodman vs. Lukens Steel Co., 482 U.S. 656, 665 (1987) ("[B]oth courts below having agreed on the facts, we are not inclined to examine the record for ourselves absent some extraordinary reason for undertaking this task. Nothing the [Petitioners] have submitted indicates that we should do so."); NCAA vs. Board of Regents, 468 U.S. 85, 98 n.15 (1984) ("In accord with our usual practice, we must now accord great weight to a finding of fact which has been approved by a court of appeals."); Graver Mfg. vs. Linde Co, 336 U.S. 271, 275 (1949) (Court should not "undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional show of error").

2. Apart from the estoppel issue, the Fifth Circuit also held that "Quitman's control over Stonewall would comport with" the Fifth Circuit's 1969 desegregation order. App. 42. The final order in that litigation was "based upon interdistrict boundaries that assumed the validity of the annexation of Stonewall by Quitman." App. 54. Although no Court ruled specifically on the validity of the annexation, "they did not have cause to do so. All parties, including Enterprise, represented to the court that the annexation was valid." Id. Enterprise neither acknowledges nor challenges this alternative holding by the Fifth Circuit. The presence of an alternative

basis to uphold the annexation militates against granting the Petition. See generally R. Stern, et al., Supreme Court Practice § 4.4, at pp. 172-73 (7th ed. 1993) (conflict in decisions may not merit grant of certiorari if Court can decide case on another ground and thereby avoid reaching issue upon which there is a conflict).

3. Enterprise contends that equitable estoppel cannot be applied to preclude it "from changing its earlier position, even if that position is wrong, ... to comport with newly developed law." Pet. at 8. The underlying premise for Enterprise's argument is incorrect. Enterprise did challenge the constitutionality of the annexation, and the Fifth Circuit rejected Enterprise's argument. App. 57-58. Enterprise has not been prevented from changing its position based on a change in the applicable law. Rather, Enterprise was estopped from challenging the annexation of Stonewall after almost three decades of acquiescence and after representing to the District Court and the Court of Appeals in the desegregation litigation that the Stonewall territory properly belonged in the Quitman district.

No court has prevented Enterprise from acknowledging that the student-transfer contract is unconstitutional. In fact, Enterprise took that position in the Fifth Circuit, App. 62, and again in this Court, Pet. at 10-11.

4. Enterprise fails to cite any authority to support its argument that equitable estoppel cannot bar assertion of a constitutional claim. As the Fifth Circuit pointed out, "[t]he admittedly sparse authority on applicability of equitable estoppel indicates the opposite." App. 52. Two district courts have held that parties could be equitably estopped from arguing constitutional violations, and this Court recently affirmed a three-judge district court's decision that laches, a

doctrine similar to equitable estoppel, could prevent a plaintiff from enjoining unprecleared election changes. Id.[1]

5. Enterprise contends that the "illicit racial motivation" for the 1962 student-transfer contract "should void the entire" compromise agreement, including the annexation, reached between Enterprise and Quitman. Pet. 11. The Fifth Circuit rejected "the idea that an unconstitutional clause in a contract automatically voids the entire contract." App. 57 n.38 (citing Shelley vs. Kraemer, 334 U.S. 1 (1948)).

Furthermore, the annexation did not contribute to segregation in 1962 and does not today. "The Stonewall annexation was no more promotive of segregation than was any of the other pre-desegregation boundary changes among Mississippi's school districts." App. 57. Thus, Enterprise's reliance on City of Richmond vs. United States, 422 U.S. 358 (1975), is misplaced. The annexation of Stonewall was not "taken for the purpose of discriminating against" blacks. Id. at 378.

Throughout its Petition, Enterprise refers or alludes to current segregative effects of the annexation or the student-transfer contract, or both. Pet. at i ("ongoing racially gerrymandered district lines"); id. at 13 (interdistrict constitutional violation in Pennsylvania case "similar to the resulting segregative effects in the Mississippi school districts

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[1] The Fifth Circuit cited Williams vs. City of Dothan, 745 F.2d 1406 (11th Cir. 1984), United States vs. Dallas County Comm'n, 548 F. Supp. 794 (S.D. Ala. 1982), aff'd in part and rev'd in part on other grounds, 739 F.2d 1529 (11th Cir. 1984), and Lopez vs. Hale County, 797 F. Supp. 547 (N.D. Tex. 1992), aff'd mem., ____ U.S. ___, 122 L. Ed 2d 112 (1993).

here described"); id. at 15 (Fifth Circuit upheld "the annexation of [Stonewall] to a school district and enforced student transfers which perpetuated segregation"). The Fifth Circuit ruled, however, that neither the annexation nor the student-transfer contract could support interdistrict relief because these events do not have current segregative effects. App. 59.

B. The Fifth Circuit's interpretation of Milliken vs. Bradley does not create a conflict with the decisions of any court of appeals.

Enterprise purports to find a conflict among the courts of appeals concerning the application of Milliken vs. Bradley, 418 U.S. 717 (1974), which holds that interdistrict relief can be imposed in a desegregation case only if "there has been a constitutional violation within one district that produces a significant segregative effect in another district." Id. at 744. Thus, "without an interdistrict violation and interdistrict effect, there is no constitutional wrong calling for an interdistrict remedy." Id. at 745. A review of the cases cited by Enterprise on pages 12 and 13 of its Petition reveals no conflict on this issue. The differences among these cases arise solely from the evidence in each case, not from their application of Milliken.

Here, the Fifth Circuit reversed the District Court's interdistrict remedy because no school district committed a constitutional violation that had current segregative effects in another district. App. 58-59. The court relied on Milliken and Lee vs. Lee County Bd. of Educ., 639 F.2d 1243 (5th Cir. 1981), which interpreted Milliken to permit an interdistrict remedy only "when there is proof of unconstitutional governmental action that has been a 'substantial cause' of a 'significant' interdistrict segregative

effect, and where an interdistrict desegregation plan is necessary in order to remedy segregation 'directly' caused by this constitutionally impermissible conduct." Id. at 1256. The Fifth Circuit's holding does not create a conflict. In fact, Lee's interpretation of Milliken has been followed in two of the cases cited by Enterprise. See Jenkins vs. Missouri, 807 F.2d 657, 666 (8th Cir. 1987); Goldsboro City Bd. of Educ. vs. Wayne County Bd. of Educ., 745 F.2d 324, 330-31 (4th Cir. 1984).

In the context of the Milliken standard, the facts of each case will determine whether an interdistrict remedy is proper. For example, in Goldsboro, the Fourth Circuit stated that the "present case differs from those cases where the courts have found an interdistrict remedy to be appropriate." 745 F. 2d at 330. In both Lee and Goldsboro, the appellate courts summarized the cases cited by Enterprise, pointing out that some presented evidence to support interdistrict relief and others did not.[2]

Rather than reveal a conflict, the cases cited by Enterprise demonstrate quite clearly that the facts of each case will determine the propriety of interdistrict relief under the Milliken standard. In the absence of an actual conflict, the fact-based issue raised by Enterprise is not the type that merits

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[2] The two cases not discussed in Goldsboro or Lee do not aid Enterprise's efforts to create a conflict. In Hoots vs. Pennsylvania, 672 F.2d 1107, 1120 (3d Cir. 1982), the court applied Milliken and noted that the interdistrict remedy "was appropriate in this case because [the district court] concluded that the violation itself was interdistrict in nature." In Jenkins vs. Missouri, 807 F.2d at 666, the court, as noted, relied on Goldsboro and Lee and held that the absence of a constitutional violation precluded interdistrict relief.

review by this Court.

CONCLUSION

Respondent Quitman School District respectfully requests that the Petition for a Writ of Certiorari be denied.

RESPECTFULLY SUBMITTED,

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